



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 378

WEDNESDAY, FEBRUARY 17, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

AN ACT relating to underground storage tanks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔ Section 1. KRS 224.60-130 is amended to read as follows:

2 (1) The Environmental and Public Protection Cabinet, Department for Environmental
3 Protection, Division of Waste Management, shall:

4 (a) Establish by administrative regulation the policy, guidelines, and procedures
5 to administer the financial responsibility and petroleum storage tank accounts
6 of the petroleum storage tank environmental assurance fund. In adopting
7 administrative regulations to carry out this section, the division may
8 distinguish between types, classes, and ages of petroleum storage tanks. The
9 division may establish a range of amounts to be paid from the fund, or may
10 base payments on methods such as pay for performance, task order, or firm
11 fixed pricing, which are designed to provide incentives for contractors to more
12 tightly control corrective action costs, and shall establish criteria to be met by
13 persons who contract to perform corrective action to be eligible for
14 reimbursement from the fund. The criteria may include the certification of
15 individuals, partnerships, and companies. Criteria shall be established to
16 certify laboratories that contract to perform analytical testing related to the
17 underground storage tank program. Owners and operators shall have all
18 required analytical testing performed by a certified laboratory to be eligible for
19 fund participation. Persons who contract with petroleum storage tank owners
20 or operators shall not be paid more than the amount authorized by the division
21 for reimbursement from the fund for the performance of corrective action. At
22 a minimum, the division shall promulgate administrative regulations that will
23 insure an unobligated balance in the fund adequate to meet financial assurance
24 requirements and corrective action requirements of KRS 224.60-135(2) and
25 (4). If the unobligated balance in the fund is not adequate to meet the

1 requirements of this paragraph, the division shall obligate funds necessary to
2 meet these requirements;

3 (b) Establish by administrative regulation the criteria to be met to be eligible to
4 participate in the financial responsibility and petroleum storage tank accounts
5 and to receive reimbursement from these accounts. The division may establish
6 eligibility criteria for the petroleum storage tank account based upon the
7 financial ability of the petroleum storage tank owner or operator. Owners or
8 operators seeking coverage under the petroleum storage tank account shall file
9 for eligibility and for financial assistance with the division. To ensure cost
10 effectiveness, the division shall promulgate administrative regulations
11 specifying the circumstances under which prior approval of corrective action
12 costs shall be required for those costs to be eligible for reimbursement from
13 the fund. In promulgating administrative regulations to carry out this section,
14 the division may distinguish between types, classes, and ages of petroleum
15 storage tanks and the degree of compliance of the facility with any
16 administrative regulations of the cabinet promulgated pursuant to KRS
17 224.60-105 or applicable federal regulations;

18 (c) Establish a financial responsibility account within the fund which may be used
19 by petroleum storage tank owners and operators to demonstrate financial
20 responsibility as required by administrative regulations of the cabinet or the
21 federal regulations applicable to petroleum storage tanks, consistent with the
22 intent of the General Assembly as set forth in KRS 224.60-120(5). The
23 account shall receive four-tenths of one cent (\$0.004) from the one and four-
24 tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received
25 in this state pursuant to KRS 224.60-145. To be eligible to use this account to
26 demonstrate compliance with financial responsibility requirements of the
27 cabinet or federal regulations, or to receive reimbursement from this account

1 for taking corrective action and for compensating third parties for bodily
2 injury and property damage, the petroleum storage tank owner or operator
3 shall meet the eligibility requirements established by administrative regulation
4 promulgated by the division;

5 (d) Establish a small operator assistance account within the fund which may be
6 used by the division to make or participate in the making of loans, to purchase
7 or participate in the purchase of the loans, which purchase may be from
8 eligible lenders, or to insure loans made by eligible lenders;

9 (e) Establish a petroleum storage tank account within the fund to be used to pay
10 the costs of corrective action due to a release from a petroleum storage tank
11 not eligible for reimbursement from the financial responsibility account.
12 Reimbursements of corrective action projects performed under the petroleum
13 storage tank account shall be carried out on or before July 15, 2013. Any
14 corrective action costs incurred after this date shall not be eligible for
15 reimbursement under the petroleum storage tank account. The account shall
16 receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on
17 each gallon of gasoline and special fuels received in this state pursuant to
18 KRS 224.60-145. This account shall not be used to compensate third parties
19 for bodily injury and property damage. Within three (3) months after July 15,
20 2004, the division shall develop a plan to address the payment of claims and
21 completion of corrective action at facilities eligible for reimbursement from
22 this account. The division shall establish a ranking system to be used for the
23 distribution of amounts from this account for the purpose of corrective action.
24 In promulgating administrative regulations to carry out this section, the
25 division shall consider the financial ability of the petroleum storage tank
26 owner or operator to perform corrective action and the extent of damage
27 caused by a release into the environment from a petroleum storage tank;

- 1 (f) Hear complaints brought before the division regarding the payment of claims
 2 from the fund in accordance with KRS 224.10-410 to 224.10-470;
- 3 (g) Establish and maintain necessary offices within this state, appoint employees
 4 and agents as necessary, and prescribe their duties and compensation;
- 5 (h) Employ, in accordance with the procedures found in KRS 45A.690 to
 6 45A.725 for awarding personal service contracts, a qualified actuary to
 7 perform actuarial studies, as directed by the division, for determining an
 8 appropriate reserve in the financial responsibility account and the petroleum
 9 storage tank account sufficient to satisfy the obligations in each account for all
 10 eligible facilities and to satisfy future liabilities and expenses necessary to
 11 operate each account. The division shall, by administrative regulation, set the
 12 entry level for participation in the fund;
- 13 (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-
 14 105 to 224.60-160, including reasonable costs of administering the fund, the
 15 procurement of legal services, and the procurement of analytical testing
 16 services when necessary to confirm the accuracy of analytical testing results
 17 obtained by a petroleum storage tank owner or operator. The expenditures
 18 shall be paid from the appropriate account;
- 19 (j) Establish a small operators' tank removal account within the fund to reimburse
 20 the reasonable cost of tank system removal for small owners and operators.
 21 The account shall not be used when an owner or operator is removing the tank
 22 with the intention of replacing or upgrading the tank. In promulgating
 23 administrative regulations to carry out this paragraph, the division may
 24 distinguish among owners and operators based on income~~], number of tanks,~~
 25 ~~number of facilities,]~~ and types and classes of tanks. **The division shall not**
 26 **place a limit on the number of tanks that an owner or operator has in order**
 27 **to be eligible to participate in the program and receive reimbursement**

under this paragraph;

- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;
- (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the

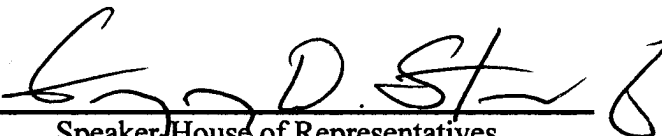
1 removal and an inspector fails to be present at the time scheduled, the tank
2 removal may proceed without making the facility ineligible for fund
3 participation unless the owner is notified by the division no later than ten (10)
4 days prior to the proposed date that an inspector is not available on the
5 proposed date, in which event a representative of the division shall contact the
6 operator and schedule a new date. If no inspector is present at the rescheduled
7 date, the removal may then proceed without penalty; and

8 (n) Establish that the deadline for submission of final reimbursement requests
9 under the petroleum storage tank account is two (2) years after receipt of a no
10 further action letter.

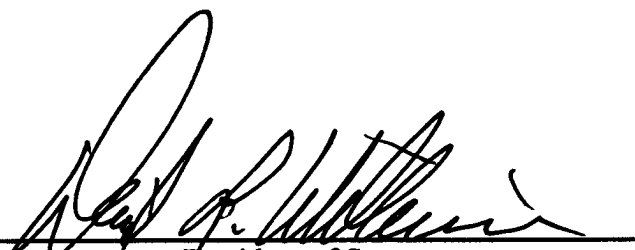
11 (2) The division may advise the cabinet on the promulgation of administrative
12 regulations concerning petroleum storage tanks.

13 (3) The division may sue and be sued in its own name.


14 (4) The division may transfer funds from the petroleum storage tank account to the
15 small operator tank removal account as needed to satisfy the obligations, future
16 liabilities, and expenses necessary to operate that account. The division may transfer
17 funds to the financial responsibility account as needed to maintain within that
18 account sufficient funds to demonstrate financial responsibility and to ensure
19 payment of claims as provided in subsection (1)(c) of this section.



Speaker House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 

April 6, 2010